

Requested by Representative WILDE

**PROPOSED AMENDMENTS TO
HOUSE BILL 3245**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and delete line 3 and insert “471.346 and 471.410; and declaring an
3 emergency.”.

4 Delete lines 5 through 23 and delete pages 2 through 13 and insert:

5 **“SECTION 1.** ORS 471.346 is amended to read:

6 “471.346. (1)(a) The Oregon Liquor Control Commission shall by rule de-
7 velop uniform standards for minor decoy operations used to investigate
8 licensees, [and] agents operating stores on behalf of the commission under
9 ORS 471.750 **and any person delivering alcoholic beverages to consum-**
10 **ers in this state** for violations of the laws of this state prohibiting sales
11 **and deliveries** of alcoholic beverages to minors.

12 “(b) Uniform standards established by the commission under this section
13 apply to all investigations conducted by the commission that use minor
14 decoys. The commission shall encourage all law enforcement agencies of this
15 state to use the uniform standards established under this section for minor
16 decoy operations conducted by the law enforcement agencies.

17 “(2) To the greatest extent possible, the uniform standards established by
18 the commission under this section:

19 “(a) [Shall] **Must** be the same for minor decoy operations conducted by
20 the commission and for minor decoy operations conducted by law enforce-
21 ment agencies of this state; and

1 “(b) [*Shall*] **Must** provide for coordination between the commission and
2 law enforcement agencies of this state in conducting minor decoy operations.

3 “(3)(a) The uniform standards established by the commission under **sub-**
4 **section (1) of this section [*shall*] for investigating sales by licensees oc-**
5 **curring on licensed premises and in-store sales by agents operating**
6 **stores on behalf of the commission under ORS 471.750 must** provide that
7 minor decoy operations must be conducted on either a random or a targeted
8 basis in cities with populations of 20,000 or more. Random minor decoy op-
9 erations [*shall*] **must** cover a range of retail outlets. Targeted minor decoy
10 operations may be conducted for a single licensee or agent, but may be used
11 only if there is a documented compliance problem with the specific licensee
12 or agent that is the target of the operation. For the purpose of implementing
13 standards for random minor decoy operations under this subsection, the
14 commission shall by rule adopt a methodology that produces, to the greatest
15 extent possible, an equal chance that any licensee or agent will be subject
16 to a minor decoy operation.

17 “(b) **The uniform standards established by the commission under**
18 **subsection (1) of this section for investigating deliveries of alcoholic**
19 **beverages to consumers in this state are not required to include the**
20 **random or targeted minor decoy operations described in paragraph (a)**
21 **of this subsection.**

22 “(4) Except as provided in subsection (5) of this section, the failure of the
23 commission or of a law enforcement agency to follow uniform standards es-
24 tablished by the commission under this section is not grounds for challenging
25 any complaint, citation or conviction for violation of the laws prohibiting
26 the sale **or delivery** of alcoholic beverages to minors.

27 “(5) In determining whether to impose sanctions based on multiple vio-
28 lations of the laws of this state prohibiting sales **or deliveries** of alcoholic
29 beverages to minors, the commission may not consider any complaint filed
30 against, **citation issued to or conviction of** a licensee **or person deliver-**

1 **ing alcoholic beverages to consumers** for selling **or delivering** alcoholic
2 beverages to a minor[, *citation issued to a licensee for selling alcoholic*
3 *beverages to a minor or conviction of a licensee for selling alcoholic beverages*
4 *to a minor*] if the complaint, citation or conviction arose out of a minor
5 decoy operation that was not conducted pursuant to the uniform standards
6 established by the commission under this section.

7 “(6) Notwithstanding any other provision of this chapter, the commission
8 may not consider any sale **or delivery** of alcoholic beverages to a minor that
9 results from a minor decoy operation that is not conducted in compliance
10 with the standards established under this section for the purpose of imposing
11 any civil penalty against a licensee **or person delivering alcoholic**
12 **beverages to consumers in this state**, making a decision on the renewal,
13 suspension or cancellation of a license **or the carrier approval of a person**
14 **delivering alcoholic beverages to consumers in this state** issued under
15 this chapter **or rules adopted pursuant to this chapter** or otherwise
16 sanctioning a licensee **or person delivering alcoholic beverages to con-**
17 **sumers** for the sale **or delivery** of alcoholic beverages to a minor.

18 “(7) The commission shall give notice of the uniform standards established
19 under this section to all law enforcement agencies of this state that conduct
20 minor decoy operations.

21 **“SECTION 2.** ORS 471.410 is amended to read:

22 “471.410. (1) A person may not sell, give or otherwise make available any
23 alcoholic liquor to any person who is visibly intoxicated.

24 “(2) No one other than the person’s parent or guardian may sell, give or
25 otherwise make available any alcoholic liquor to a person under the age of
26 21 years. A parent or guardian may give or otherwise make alcoholic liquor
27 available to a person under the age of 21 years only if the person is in a
28 private residence and is accompanied by the parent or guardian. A person
29 violates this subsection [*who*] **if the person** sells, gives or otherwise makes
30 available alcoholic liquor to a person with the knowledge that the person to

1 whom the liquor is made available will violate this subsection.

2 “(3)(a) A person who exercises control over private real property may not
3 knowingly allow any other person under the age of 21 years who is not a
4 child or minor ward of the person to consume alcoholic liquor on the prop-
5 erty, or allow any other person under the age of 21 years who is not a child
6 or minor ward of the person to remain on the property if the person under
7 the age of 21 years consumes alcoholic liquor on the property.

8 “(b) This subsection:

9 “(A) Applies only to a person who is present and in control of the lo-
10 cation at the time the consumption occurs;

11 “(B) Does not apply to the owner of rental property, or the agent of an
12 owner of rental property, unless the consumption occurs in the individual
13 unit in which the owner or agent resides; and

14 “(C) Does not apply to a person who exercises control over a private
15 residence if the liquor consumed by the person under the age of 21 years is
16 supplied only by an accompanying parent or guardian.

17 “(4) This section does not apply to sacramental wine given or provided
18 as part of a religious rite or service.

19 “(5) Except as provided in [*subsections (6) and (7)*] **subsection (6)** of this
20 section, a person who violates subsection (1) or (2) of this section commits
21 a Class A misdemeanor. Upon violation of subsection (2) of this section, the
22 court shall impose at least a mandatory minimum sentence as follows:

23 “(a) Upon a first conviction, a fine of at least \$500.

24 “(b) Upon a second conviction, a fine of at least \$1,000.

25 “(c) Upon a third or subsequent conviction, a fine of at least \$1,500 and
26 not less than 30 days of imprisonment.

27 “(6)(a) A person who violates subsection (2) of this section is subject to
28 the provisions of this subsection if the person does not act knowingly or
29 intentionally and:

30 “(A) Is licensed or appointed under this chapter; [*or*]

1 “(B) Is an employee of a person licensed or appointed under this chapter
2 and holds a valid service permit [*or has attended a program approved by the*
3 *Oregon Liquor Control Commission that provides training to avoid violations*
4 *of this section.*];

5 **“(C) Is an employee of a person that is licensed or appointed under**
6 **this chapter and that has the privilege of selling factory-sealed con-**
7 **tainers of alcoholic beverages for off-premises consumption; or**

8 **“(D) Is an individual who delivers alcoholic beverages to the phys-**
9 **ical possession of consumers at delivery addresses that are in this**
10 **state and not regulated by the Oregon Liquor Control Commission**
11 **under this chapter or ORS 475B.010 to 475B.545, 475B.550 to 475B.590 or**
12 **475B.600 to 475B.655.**

13 “(b) For a person described in paragraph (a) of this subsection:

14 “(A) A first conviction is a Class A violation.

15 “(B) A second conviction is a specific fine violation, and the presumptive
16 fine for the violation is \$860.

17 “(C) A third conviction is a Class A misdemeanor. The court shall impose
18 a mandatory fine of not less than \$1,000.

19 “(D) A fourth or subsequent conviction is a Class A misdemeanor. The
20 court shall impose a mandatory fine of not less than \$1,000 and a mandatory
21 sentence of not less than 30 days of imprisonment.

22 “[~~(7)~~ *For an employee of an off-premises sales licensee who violates sub-*
23 *section (2) of this section while operating a checkout device and does not act*
24 *knowingly or intentionally, a first conviction is a Class A violation.*]

25 “[~~(8)~~ **(7)** The court may waive an amount that is at least \$200 but not
26 more than one-third of the fine imposed under subsection (5) of this section,
27 if the violator performs at least 30 hours of community service.

28 “[~~(9)~~ **(8)** Except as provided in subsection [~~(8)~~ **(7)**] of this section, the
29 court may not waive or suspend imposition or execution of the mandatory
30 minimum sentence required by subsection (5) or (6) of this section. In addi-

1 tion to the mandatory sentence, the court may require the violator to make
2 restitution for any damages to property where the alcoholic liquor was ille-
3 gally consumed or may require participation in volunteer service to a com-
4 munity service agency.

5 “[~~(10)(a)~~] **(9)(a)** Except as provided in paragraph (b) of this subsection, a
6 person who violates subsection (3) of this section commits a Class A vio-
7 lation.

8 “(b) A second or subsequent violation of subsection (3) of this section is
9 a specific fine violation, and the presumptive fine for the violation is \$1,000.

10 “[~~(11)~~] **(10)** Nothing in this section prohibits any licensee under this
11 chapter from allowing a person who is visibly intoxicated from remaining
12 on the licensed premises so long as the person is not sold or served any al-
13 coholic liquor.

14 **“SECTION 3. (1) The Task Force on Third-Party Ecommerce Pro-**
15 **viders is established.**

16 **“(2) The task force consists of 13 members as follows:**

17 **“(a) The President of the Senate shall appoint:**

18 **“(A) One member from among members of the Senate.**

19 **“(B) Four members as follows:**

20 **“(i) One member who represents law enforcement agencies in this**
21 **state;**

22 **“(ii) One member who represents businesses selling alcoholic**
23 **beverages through third-party ecommerce providers in this state;**

24 **“(iii) One member who represents an organization that focuses on**
25 **public health; and**

26 **“(iv) One member who is a retail sales agent appointed by the**
27 **Oregon Liquor Control Commission under ORS 471.750.**

28 **“(b) The Speaker of the House of Representatives shall appoint:**

29 **“(A) One member from among members of the House of Represen-**
30 **tatives.**

1 **“(B) Four members as follows:**
2 **“(i) One member who represents third-party delivery services oper-**
3 **ating in this state;**
4 **“(ii) One member who represents payment processors that facilitate**
5 **ecommerce transactions of alcoholic beverages;**
6 **“(iii) One member who has expertise in ecommerce transactions for**
7 **alcoholic beverages; and**
8 **“(iv) One member who represents local government.**
9 **“(c) In addition to the members described in paragraphs (a) and (b)**
10 **of this subsection, one representative from each of the following state**
11 **agencies shall be members of the task force:**
12 **“(A) The Alcohol and Drug Policy Commission;**
13 **“(B) The Oregon Health Authority; and**
14 **“(C) The Oregon Liquor Control Commission.**
15 **“(3) The task force shall study third-party ecommerce providers**
16 **that operate software platforms to facilitate sales over the Internet**
17 **of alcoholic beverages by businesses authorized to sell alcoholic**
18 **beverages for delivery to consumers in this state, including third-party**
19 **ecommerce providers that also provide the service of delivering alco-**
20 **holic beverages to consumers in this state on behalf of authorized**
21 **businesses. The task force shall focus the study on at least the fol-**
22 **lowing:**
23 **“(a) Access to the third-party ecommerce provider platforms;**
24 **“(b) Ecommerce transaction processing;**
25 **“(c) Communication between different entities and actors that op-**
26 **erate through a third-party ecommerce provider platform;**
27 **“(d) Process flows for third-party ecommerce providers that provide**
28 **delivery services;**
29 **“(e) Data collection and retention;**
30 **“(f) Technology and integration; and**

1 “(g) The appropriate structure and impact of regulation by the
2 Oregon Liquor Control Commission on independent contractors that
3 make deliveries of alcoholic beverages.

4 “(4) The task force shall not consider in the study described in
5 subsection (3) of this section a person that transports or delivers al-
6 cohool in this state and that is:

7 “(a) Regulated as a motor carrier or freight forwarder, as defined
8 in 49 U.S.C. 13102, and subject to the registration requirements under
9 49 U.S.C. 13902 or 13903; or

10 “(b) Regulated as an air carrier, as defined in 49 U.S.C. 40102.

11 “(5) A majority of the voting members of the task force constitutes
12 a quorum for the transaction of business.

13 “(6) Official action by the task force requires the approval of a
14 majority of the voting members of the task force.

15 “(7) The task force shall elect one of its members to serve as
16 chairperson.

17 “(8) If there is a vacancy for any cause, the appointing authority
18 shall make an appointment to become immediately effective.

19 “(9) The task force shall meet at times and places specified by the
20 call of the chairperson or of a majority of the voting members of the
21 task force.

22 “(10) The task force may adopt rules necessary for the operation
23 of the task force.

24 “(11) The task force shall submit a report in the manner provided
25 by ORS 192.245, and may include recommendations for legislation, to
26 an interim committee of the Legislative Assembly related to business
27 no later than June 20, 2022.

28 “(12) The Oregon Liquor Control Commission shall provide staff
29 support to the task force.

30 “(13) Members of the Legislative Assembly appointed to the task

1 force are nonvoting members of the task force and may act in an ad-
2 visory capacity only.

3 “(14) Members of the task force who are not members of the Leg-
4 islative Assembly are not entitled to compensation or reimbursement
5 for expenses and serve as volunteers on the task force.

6 “(15) All agencies of state government, as defined in ORS 174.111,
7 are directed to assist the task force in the performance of the duties
8 of the task force and, to the extent permitted by laws relating to
9 confidentiality, to furnish information and advice the members of the
10 task force consider necessary to perform their duties.

11 “SECTION 4. Section 3 of this 2021 Act is repealed on July 1, 2022.

12 “SECTION 5. (1) The amendments to ORS 471.346 by section 1 of this
13 2021 Act become operative on January 1, 2022.

14 “(2) The Oregon Liquor Control Commission may take any action
15 before the operative date specified in subsection (1) of this section that
16 is necessary to enable the commission to exercise, on and after the
17 operative date specified in subsection (1) of this section, all of the du-
18 ties, functions and powers conferred on the commission by the
19 amendments to ORS 471.346 by section 1 of this 2021 Act.

20 “SECTION 6. This 2021 Act being necessary for the immediate
21 preservation of the public peace, health and safety, an emergency is
22 declared to exist, and this 2021 Act takes effect on its passage.”.

23